Cardinal Systems, a Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant *and* Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL-CIO *and* Naomi Joyce Thompson. Cases 25-CA-11597, 25-CA-11838, and 25-CA-11795

December 2, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On April 16, 1981, Administrative Law Judge Henry L. Jalette issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs and Respondent filed a brief in answer to the General Counsel's exceptions.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

The Remedy

As we have found that Respondent violated Section 8(a)(1) of the Act by soliciting employees to revoke dues-checkoff authorizations, we shall adopt the Administrative Law Judge's recommended cease-and-desist provision with respect to this violation. The General Counsel excepts to the Administrative Law Judge's refusal to order an additional remedy requiring Respondent to remit dues to the Union on behalf of those employees who were unlawfully solicited to revoke their dues-checkoff authorizations. We find merit to the General Counsel's exception.[4]

As more fully described by the Administrative Law Judge, the credited testimony establishes that Respondent's cafeteria manager, Marge Cox, approached employees on frequent occasions and urged these employees to submit to Respondent written notices revealing whether or not they desired to continue to maintain their dues-checkoff authorizations. During the course of these solicitations Cox made disparaging remarks to one employee about the "——Union" and approached another employee a second time after that employee's initial written indication that she desired to maintain her dues-checkoff authorization. Following Cox's solicitations, several employees tendered revocations of their previously executed authorizations. Inasmuch as Cox approached some employees who had never made any inquiries whatsoever regarding their dues obligations, the only reasonable inference to be drawn is that, absent Cox's unlawful solicitation, these employees would likely

[1] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and positions of the parties.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] The General Counsel has excepted to the Administrative Law Judge's finding and conclusion that Respondent did not engage in conduct amounting to solicitation of employees to engage in surveillance of employees' union activities. He contends that the credited testimony of employee Wagner establishes that Cafeteria Manager Marge Cox, in addition to interrogating Wagner about events occurring at union meetings already held, as found by the Administrative Law Judge, also solicited Wagner *before union* meetings to let Cox know what transpired at such meetings. We find merit to the General Counsel's exception. Thus, the record clearly establishes that Wagner testified to more than one conversation with Cox, including a conversation before any union meetings were held. Wagner's credited testimony in this regard indicates that Cox asked Wagner "to let her know what went on at the Union meetings." Such conduct clearly constitutes a solicitation to engage in surveillance of employees' union activities in violation of Sec. 8(a)(1) of the Act. *Daniel Construction Company, a Division of Daniel International Corporation*, 241 NLRB 336 (1979).

In addition, the General Counsel excepts to the Administrative Law Judge's failure to find and conclude that Respondent's cafeteria manager, Cox, falsely signed the name of a unit employee to a showing-of-interest statement accompanying a decertification petition in violation of Sec. 8(a)(1). We agree. Although the Administrative Law Judge credited the testimony of employee Hiten that she observed Marge Cox sign the name of employee Peggy Cox to a showing-of-interest statement to be submitted with a decertification petition, he declined to specifically find, based on signature comparisons, that the name of Peggy Cox on the showing-of-interest statement was forged. However, in view of the Administrative Law Judge's crediting of Hiten's testimony that Marge Cox falsely signed Peggy Cox's name in Hiten's presence to the showing-of-interest statement, we find the Administrative Law Judge's hesitancy unwarranted. Accordingly, we conclude that Respondent additionally violated Sec. 8(a)(1) of the Act by virtue of Marge Cox's signing of an employee's name, while in the presence of another employee, on the showing-of-interest statement seeking the Union's removal as bargaining representative. We have modified the Administrative Law Judge's recommended Order to reflect these additional violations.

Finally the General Counsel has excepted to the Administrative Law Judge's failure to include a broad cease-and-desist order herein. It is the Board's policy that such an order is warranted only when a respondent is shown to have a proclivity to violate the Act, or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for employees' fundamental statutory rights. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). With respect to the instant case, we find that a broad order is not warranted.

[4] Member Fanning agrees with the Administrative Law Judge that requiring Respondent to remit dues on behalf of the union members it unlawfully solicited to revoke checkoff is inconsistent with our holding that an employer may unilaterally discontinue checkoff following expiration of a collective-bargaining agreement. See *Finger Lakes Plumbing & Heating Co., Inc.*, 253 NLRB 406 (1980); *Peerless Roofing Co., Ltd.*, 247 NLRB 500 (1980). Because Respondent could lawfully discontinue checkoff without revocation, its solicitation of revocations could not have unlawfully caused any monetary loss to the Union. Moreover, the members remain liable to the Union for their dues regardless of whether or not Respondent deducts those dues from wages. In those cases which the majority relies upon, the obligation itself arose from an unlawfully created relationship.

have continued to maintain in effect their dues-checkoff authorizations. In any event, since Cox's conduct makes it impossible to ascertain with absolute certainty whether the solicited employees would have voluntarily maintained their authorizations, any doubts resulting from the illegal conduct should be resolved against the responsible party.

In ordering this additional remedy, we find Respondent's unlawful solicitation analogous to those instances in which we have ordered reimbursement of union dues where employees have been unlawfully influenced or coerced by their employers into paying dues, joining a union, or maintaining their union membership. See *Haven Manor Health Related Facility*, 226 NLRB 329 (1976); *R. L. Sweet Lumber Company*, 207 NLRB 529, 539-540 (1973). As in those cases, a cease-and-desist order, standing alone, is insufficient to return the parties to the status quo existing prior to the commission of the unfair labor practice and, thus, reimbursement to the Union of dues lost herein as a result of Respondent's unfair labor practice is necessary and proper to effectuate the purposes and policies of the Act.[5] Accordingly, in addition to the remedy provided by the Administrative Law Judge, we shall order Respondent to reimburse the Union for any dues lost by the Union with regard to those employees unlawfully solicited.[6]

[5] We find unpersuasive Member Fanning's assertion that Respondent's unlawful solicitation could not have caused any monetary loss to the Union because, under Sec. 8(a)(5) of the Act, Respondent could lawfully discontinue dues checkoff without employee revocation following contract expiration. In our view, Respondent's statutory right unilaterally to discontinue checkoff at contract expiration bears no causal relationship to whether or not unlawfully solicited employees would, in fact, have voluntarily maintained those authorizations in the absence of Respondent's unlawful conduct. Thus, while we agree that Respondent lawfully could have discontinued the contractual checkoff mechanism for all unit employees upon expiration of the contract without first securing individual revocations, the evidence indicates that Respondent *instead* chose to solicit employees individually to express in writing their intentions concerning continued checkoff deductions and apparently continued to honor such deductions for those employees who did not tender such a revocation. Accordingly, in these circumstances, the Union may in fact have suffered monetary loss as a result of the revocations unlawfully solicited by Respondent. In the absence of Respondent's unlawful conduct, the Union would likely have continued to receive dues through the checkoff mechanism on behalf of those employees unlawfully solicited by Respondent. Therefore, in our view, a remedy requiring remittance of dues to the Union lost as a likely result of Respondent's unlawful solicitation properly returns the parties to the *status quo ante* existing prior to Respondent's unlawful conduct.

[6] As the record does not reveal whether the unlawfully solicited employees otherwise continued to tender dues to the Union apart from the checkoff mechanism, we shall leave the determination of the amounts actually lost by the Union, if any, to the compliance stage of these proceedings. Further, we will limit such reimbursement as applicable to only those employees who made no specific inquiries to Respondent regarding their dues obligations prior to Respondent's solicitations. Of course, reimbursement will be ordered only with respect to those employees who in fact otherwise had a dues obligation to the Union.

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the payments for break periods and the holiday pay for Christmas 1979 due based on the formula set forth therein.

Amended Conclusions of Law

Substitute the following for Conclusion of Law 6:

"6. By soliciting employees to engage in surveillance of employees' union activities, by falsely signing the name of an employee to a statement seeking the Union's removal as bargaining representative, by questioning employees about their union sentiments or activities and their cooperation with the National Labor Relations Board in the processing of cases in a manner and under circumstances tending to coerce employees in the exercise of Section 7 rights, by creating the impression that the union activities of the employees were under surveillance, by promises of higher wages, improved working conditions, or other benefits, by threats of a reduction in hours if employees selected the Union in an election, by assisting employees in the filing of a decertification petition, by soliciting employees to revoke dues-checkoff authorizations, by prohibiting employees from talking about the Union on nonworking time, and by threats to discharge employees for cooperating with the National Labor Relations Board, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Cardinal Systems, a Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant, Walesboro, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(c) and reletter the subsequent paragraphs accordingly:

"(c) Soliciting employees to engage in surveillance of employees' union activities."

2. Insert the following as paragraph 1(g) and reletter the subsequent paragraphs accordingly:

"(g) Falsely signing the name of an employee to a statement seeking the Union's removal as bargaining representative."

3. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Reimburse Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL-CIO, all union dues not tendered to the Union by employees solicited to revoke their dues-checkoff authorizations, with interest thereon."

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT question employees about their union sentiments or activities or their cooperation with the National Labor Relation Board in the processing of cases.

WE WILL NOT create the impression that we are keeping your union activities under surveillance by telling employees we will find out what happens at union meetings.

WE WILL NOT solicit employees to engage in surveillance of employees' union activities.

WE WILL NOT promise higher wages, improved working conditions, or other benefits, in order to induce you to withdraw your support from Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL–CIO.

WE WILL NOT threaten you with a reduction in hours of work if you select Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL–CIO, as your representative in an election to be conducted by the National Labor Relations Board.

WE WILL NOT assist you in filing a petition to decertify Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL–CIO.

WE WILL NOT falsely sign the name of an employee to a statement seeking the removal of Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL–CIO, as bargaining representative.

WE WILL NOT solicit you to revoke the dues-checkoff authorizations on behalf of Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL–CIO.

WE WILL NOT prohibit you from talking about the Union on nonworking time.

WE WILL NOT threaten to discharge employees for cooperating with the National Labor Relations Board.

WE WILL NOT refuse to recognize and bargain with the above-named Union as the representative of our employees in the appropriate unit. The appropriate unit is:

All full-time and regular part-time employees employed at our food service operations at the Cummins Engine Company facility in Walesboro, Indiana, exclusive of all clerical employees, all confidential employees, all professional employees, all guards and supervisors as defined in the Act.

WE WILL NOT make changes in working conditions with regard to clocking out for breaks or payment of holiday pay without notice no, or consultation with, the above-named Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL, upon request, meet and bargain with the above-named Union in the appropriate unit described above concerning rates of pay, wages, hours of work, and conditions of employment of our employees and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL make Lois Wagner and Mike Ferguson whole for any loss of pay they may have suffered by reason of our change in the practice with regard to clocking out for breaks.

WE WILL make all our employees whole who were otherwise entitled to payment of holiday pay for the Christmas 1979 holiday season by payment to them of 4 days of holiday pay, with interest thereon.

WE WILL remit to Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL–CIO, all union dues not tendered to the Union by employees solicited to revoke their dues-checkoff authorizations, with interest thereon.

CARDINAL SYSTEMS, A DIVISION OF HOSPITALITY MOTOR INNS, INC., D/B/A CUMMINS COMPONENT PLANT

DECISION

STATEMENT OF THE CASE

HENRY L. JALETTE, Administrative Law Judge: This proceeding involves allegations that Cardinal Systems, a Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant (Respondent) violated Section 8(a)(1), (3), and (5) of the Act. The proceeding is based on a charge filed by the Hotel and Restaurant Employees and

Bartenders Union, Local No. 58, AFL-CIO (the Union) in Case 25-CA-11597 on November 30, 1979, which charge was amended on January 3, 1980. Complaint thereon issued on January 8, 1980, which complaint was amended on May 14 and 27, 1980. On January 30, 1980, a charge was filed by Naomi Thompson in Case 25-CA-11795. That charge was amended on March 6, 1980, and complaint issued on March 7, 1980. On February 6, 1980, the Union filed the charge in Case 25-CA-11838, and on March 19, 1980, complaint issued thereon with an order consolidating Cases 25-CA-11795 and 25-CA-11597. On June 5 and 6 and September 15 and 16, 1980, hearing was held in Columbus, Indiana.

Upon the entire record,[1] including my observation of the witnesses, and after due consideration of the briefs of the parties, I hereby make the following:

FINDINGS OF FACT

I. THE FACTUAL SETTING

Respondent is an Ohio corporation with its principal office at Mayfield, Ohio, and facilities in the States of Ohio and Indiana, including a facility at the Cummins Component Plant of Cummins Engine Company in Walesboro, Indiana (the facility involved herein), where it is engaged in providing food services to employees of Cummins.[2] At all times material herein, either as west area food manager or regional manager of food support, Frank Klassen was the supervisor primarily responsible for the operation of a number of Respondent's cafeterias, including the Walesboro cafeteria. Marge Cox was manager of the Walesboro cafeteria.

On June 28, 1973, the Union was certified as bargaining representative of Respondent's employees who worked at the cafeteria at the Walesboro plant. The last contract between Respondent and the Union was entered into on December 7, 1976, effective to December 7, 1979.

On October 1, 1979, a petition signed by employee Linda Young was filed in Case 25-RD-646.

On October 23, 1979, the parties entered into a consent election agreement and pursuant thereto an election was scheduled for November 30, 1979.

On the morning of November 30, the Union filed the charge in Case 25-CA-11597, and by reason thereof the ballots cast in the election later that day were impounded. On January 25, 1980, the Regional Director dismissed the petition in Case 25-RD-646, and on April 9, 1980, the Board affirmed the dismissal action.

[1] The original exhibits were misplaced and never reached me. Duplicate exhibits were substituted except for G.C. Exhs. 47 and 49. The General Counsel conceded by letter dated December 10, 1980, which is hereby made part of the record that the absence of Exhs. 47 and 49 was not significant in terms of analysis of the issues.

[2] Jurisdiction is not in issue. The complaint alleges, Respondent admits, and I find that Respondent meets the Board's standards for the assertion of jurisdiction.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Introductory Statements*

The complaints herein allege that Respondent engaged in a number of unfair labor practices before and after the filing of the RD petition, including encouraging and assisting employees in the preparation and filing of the petition and refusing to meet and bargain with the Union. In support thereof, testimony was adduced attributing a number of unlawful remarks to Cox over a period of several months, and a substantial part of the case depends on her credibility. Klassen's credibility is also at issue, but he is not alleged to have engaged in unfair labor practices to the same extent as Cox.

A threshold issue then, is who is to be credited. In my judgment, in most instances of conflict, the General Counsel's witnesses are to be credited. In general, alleged discriminatee Thompson being the exception, I can see no motive for the General Counsel's witnesses to lie. Essentially, the record discloses employees aggrieved over poor union representation with their grievances in such regard being encouraged by Respondent. Thus, the General Counsel's witnesses, again with the exception of Thompson, signed the petition to decertify the Union and revoke their dues-checkoff authorizations. In these circumstances, and granted that they may have been aggrieved at Respondent about working conditions, I am persuaded that their testimony was not the product of interest or bias.

The same may not be said for Respondent's witnesses. They clearly had an interest in the outcome of the proceeding. Linda Young was strongly opposed to thc Union. Marge Cox' conduct was in issue, as was Klassen's. On the matter of demeanor, Marge Cox was not impressive. Her answers to questions were evasive and she clearly did not answer truthfully when confronted with General Counsel's Exhibit 44, a sheet of her scribblings.

On the basis of the foregoing, I credit the General Counsel's witnesses generally except where it appears to me they were mistaken. I do not credit Respondent's witnesses generally. In those instances where I do, I rely on circumstances which tend to support their testimony.

B. *Case 25-CA-11597*

1. The independent 8(a)(1) violation

Paragraphs 5(a), (b), and (c) of the complaint allege that in late July, August, and September 1979, Marge Cox interrogated employees about union activities, solicited employees to engage in surveillance, and created the impression of surveillance. In support of these allegations, the General Counsel adduced the testimony of Lois Wagner that in early August, Cox asked her "How do you feel about the Union thing?" Cox then discussed the fact that the union contract was expiring in December and added that "If you do not vote for your contract in December we can get you more money." She also asked Wagner if she was a good union member. Wagner testified further that in late August, September, October, or November, Cox would ask her after there had been a

union meeting what went on at the meeting, whether her name had been brought up, and whether contract proposals had been discussed. When Wagner told Cox that she could not give her any information, Cox told her she would find somebody else that would.

Cox did not specifically deny having the conversations with Wagner which Wagner described, and, contrary to Respondent's contentions, I find that in asking Wagner how she felt about the Union, whether she was a good union member, and what went on at the union meetings, Cox engaged in unlawful interrogation. Her questions had no legitimate purpose and occurred in the context of other unfair labor practices as set forth below, including an implied promise of benefit. In the circumstances, such questioning would have a tendency to coerce the employee in the exercise of Section 7 rights and was violative of Section 8(a)(1) of the Act.

The allegation in paragraph 5(b) that in asking Wagner about what happened at union meetings Cox solicited an employee to engage in surveillance is found lacking in merit. As I construe Wagner's testimony, Cox was engaging in interrogation. However, in telling Wagner that she would find somebody else that would tell her what happened, I find that Cox created the impression of surveillance as alleged in paragraph 5(c).

Paragraph 5(d) of the complaint alleges that in late July or early August 1979, Marge Cox told employees that Respondent could "buy off" the Union and thereby remove it as the employees' collective-bargaining agent. The allegation is based on the testimony of Naomi Thompson that Cox remarked to her that the people who owned Cardinal now had enough money "to buy and sell the union . . . they even had enough money . . . to buy the Empire State Building."

I credit Thompson's testimony, but I find the remark not to be violative of the Act. I construe the remark as a boast of Respondent's economic strength and not as a suggestion that Respondent would "buy off" the Union.

Paragraph 5(e) of the complaint alleges that Marge Cox in late July and August 1979, made promises of benefits if employees rejected the Union. In support of this allegation, the General Counsel adduced the testimony of Wagner, described earlier, when Cox interrogated Wagner and told her "If you do not vote for your contract in December, we can get you more money."

I credit this testimony and find an unlawful promise of higher wages.

Wagner testified that Cox had told her on various occasions that she thought the employees could make more money if they did not have a union. I credit Wagner and find such remarks to constitute implied promises of higher wages in violation of Section 8(a)(1) of the Act.

Employee Mike Ferguson testified that maybe a month before the filing of the RD petition Cox said she would like to see the Union out. She said the working conditions would be a lot better with the Union out. I credit Ferguson and find Cox's remark to constitute an unlawful promise of improved working conditions in violation of Section 8(a)(1) of the Act.

Paragraphs 5(f), (g), (h), (i), and (j) allege, in effect, that Respondent assisted and encouraged employees in the filing of the petition in Case 25-RD-646. The allegations are based essentially on the testiony of Sue Hiten.

Hiten is a former employee of Respondent who was employed from October 1976 to January 1980 when she quit.[3] According to Hiten, she had several conversations with Marge Cox in which Cox remarked that the Union was not doing anything for the employees and she (Cox) could do nothing for them as long as the Union was there.

In mid-August, Klassen held a meeting of employees assertedly to advise them that the Company had been notified by the Union of a dues increase. (Apparently all, or most, of the employees had authorized dues checkoff.)

Klassen testified that the employees were upset at the news and said they could not understand since the Union was not doing anything for them.

Hiten testified that a few days before September 26, she talked to Klassen about how she could go about getting rid of the Union. She testified he told her to contact the National Labor Relations Board and he would get her the telephone number. Hiten said she was later given the number, but she could not recall whether Cox or Klassen gave it to her.

On September 26, on reporting to work, Marge Cox asked Hiten if she had called the NLRB and Hiten said she had but no one was there. They then went to Cox's office and Hiten called Indianapolis and asked to be billed on her home phone as Cox suggested. Cox told her Klassen would reimburse her. (Hiten testified Klassen later paid her $3.) On September 28, Hiten came to work with the NLRB petition form. She testified that she showed it to Cox and told her she did not know how to fill it out. Cox suggested they go to the Company's office (located some distance from the cafeteria). They did, and there they met with Klassen, and Hiten filled out the petition with information supplied by Klassen. Item 1 of the form specifies the purpose of the petition which Hiten had checked as certification of representative and Klassen corrected that to withdrawal of union-shop authority (which was also incorrect). Before they left, Klassen's secretary weighed the material and placed postage on an envelope. The petition was not ready for mailing because it was not signed. Hiten had told Klassen she would not sign it because of a matter pending before the Union in which she was involved and Cox had suggested that Linda Young would sign.

Cox and Hiten returned to the cafeteria and there Hiten prepared a statement to be signed by employees to be submitted with the petition as a showing of interest. She remarked to Cox that she would have to get Peggy Cox, Marge Cox's daughter statement and an employee of Respondent, to sign the showing of interest and Cox said she would sign for her and she did. Hiten left Cox's office and obtained the signatures of two employees, then she returned to the office where she obtained Young's signature and turned over to Young both the showing of interest statement and the petition which Young signed. Hiten never saw the papers again.

[3] In November 1977 Hiten was fired, but was reinstated in August 1978, without backpay, as a result of grievance proceedings.

That evening, on the second shift, employees Lois Wagner, Mike Ferguson, and Naomi Thompson were asked to sign the showing of interest statement by Young, in the presence of Ann Walsh, a manager-trainee and alleged supervisor. Wagner and Ferguson signed, but Thompson refused. (Earlier that day, Wagner had received a call from Cox in which Cox asked her if she was going to sign. Wagner said she did not know and Cox said she and Ferguson might as well sign because "we" have signatures anyway.)

As noted above, on October 1, 1979, the RD petition was filed.

The foregoing is Hiten's descripton of the preparation and filing of the RD petition. Her testimony is contradicted in most of the essential particulars. Thus, Cox denied she accompanied Hiten to Klassen's office or that she signed her daughter's name. She testified that she did not know about the RD petition until it was over with. Peggy Cox testified that she signed the showing-of-interest statement at the request of Hiten. Klassen also denied that Cox accompanied Hiten to his office and that he reimbursed Hiten for a telephone call. Becky Van Natta also denied that Cox accompanied Hiten to the office and that she placed postage on an envelope for the petition. According to Linda Young, she and Hiten started the RD petition. Hiten got her information about the Board from her father and Young, and Hiten went into Cox's office to call the Board.

As can be seen except as to the fact that Hiten initially inquired about how to go about decertifying the Union, there is a sharp conflict as to the preparation and filing of the petition and the procurement of the showing-of-interest statement, a conflict that can only be explained as the result of consciously false testimony. The protagonists are Hiten on the one hand and Marge and Peggy Cox, Klassen, Young, and Van Natta on the other. If the test were one of numbers, Hiten could not be credited. I credit Hiten. Contrary to Respondent's assertions, I can conceive of no motive for Hiten to lie. True, she may have been aggrieved against Respondent over loss of wages during the period between her discharge in 1978 and her reinstatement and Respondent's failure to pay holiday pay in the 1979 Christmas season; yet, she admitted that she initiated the process which led to the filing of the RD petition, a fact she would likely have concealed if she were embarked on fabricating a story about Respondent's participation in the process. Moreover, the details in her description of Respondent's participation in the process lend credence to her testimony. Such details as the forgery of Peggy Cox's name,[5] the telephone bill, the postage stamp, while supportive of a finding of assistance, were not all necessary. The role of Marge Cox alone was sufficient.[6] For these reasons, plus the fact that Respondent's witnesses had more motive to lie than Hiten, and my conviction that Marge Cox, in particular, was not a credible witness, I credit Hiten.

In light of the foregoing, I conclude and find that Marge Cox's conduct as described by Hiten and Wagner, Klassen's payment of the telephone bill and providing the postage for the RD petition, constituted unlawful assistance and encouragement in the filing of the RD petition and that Respondent thereby violated Section 8(a)(1) of the Act. In making this finding, I do not rely on such ministerial aid as Klassen or Cox may have provided in giving Hiten the Board's telephone number, nor in Klassen's assistance in helping Hiten correctly fill out the RD petition. I will therefore dismiss paragraph 5(h) of the complaint.

Paragraph 5(j) of the complaint alleges that Respondent violated Section 8(a)(1) of the Act by the conduct of one Ann Walsh in directing employees to sign the RD petition. The evidence that Ann Walsh engaged in unlawful conduct is very sketchy. In any event, I conclude and find that Walsh, who was a manager trainee, was not a supervisor within the meaning of Section 2(13) of the Act, nor did Respondent hold her out as an agent. Accordingly, I shall dismiss paragraph 5(j) of the complaint.

Paragraphs 5(k), (l), and (n) allege that Marge Cox threatened employees with a reduction in hours of work, changes in working conditions, and unspecified reprisals if they continued to support the Union. In support of these allegations, the General Counsel adduced testimony by employee Lois Wagner that after a union meeting on November 17 Cox was angry with her about a remark Wagner had made at the union meeting about Cox. In the conversation they had, Cox told Wagner that, if the Union got back in, there would be an awful lot of changes made. The General Counsel also adverts to testimony by employee Rocille Bennett that, prior to a union meeting in November, Cox told her that if she voted for the Union Bennett would get her hours cut and would not get a raise. Hiten testified to a similar threat after the RD election on November 30, wherein Cox told her if the Union got back in her hours would be cut and it would be rough on the employees.

The statements attributed to Cox are clearly unlawful threats. I credit Wagner, Bennett, and Hiten, for reasons earlier given, and I find that by such statements Respondent violated Section 8(a)(1) of the Act.

Paragraph 5(m) of the complaint alleges that in mid-April 1980 Cox promised increased rates of pay and adherence to a collective-bargaining agreement if employees selected another union to represent them. It appears that, sometime in early 1980, Peggy Cox and Linda Young undertook to obtain representation by a Teamsters Union. During a period of sick leave, Wagner received phone calls from Marge Cox in one of which Cox told Wagner about the activity on behalf of the Teamsters, and, one day after Wagner had returned to work, Marge Cox told her that Peggy Cox would run the Union, that it would be run right, and that they would go by the contract. She also said that if Cummins took over the cafeteria the employees would be taken over by

[5] To resolve credibility on the issue of the alleged forged signature, I was asked to compare the writing of Peggy Cox name on G.C. Exh. 4 with specimens of her handwriting. The name Peggy Cox appears to be an easy one to forge and I am hesistant to base a finding on my comparison, but were a comparison essential, I would find that the name of Peggy Cox on G.C. Exh. 4 was forged.

[6] In this connection, Wagner's testimony that Cox had called her and asked if she were going to sign the showing-of-interest statement and Cox's saying Wagner and Ferguson might as well sign because "we" have signatures anyway was undenied and credited.

Cummins and if they were represented by the Teamsters Union they would make more money.

I credit Wagner and find that Cox's remarks constituted unlawful promises of benefit in violation of Section 8(a)(1) of the Act.

Paragraphs 5(o), (p), and (q) of the complaint are somewhat interrelated and involve allegations of unlawful conduct by Marge Cox in connection with the hearing which was then scheduled in the instant case.

According to Lois Wagner, on May 7, 1980, she mentioned to Linda Young that she had given her pay stubs to the labor relations lawyer. Shortly thereafter, Cox called Wagner and asked her why she had given her pay stubs to the union man. She told Wagner that Young had told her Wagner had done so and that he came to her house regularly. Wagner told Cox she had given the pay stubs to a Board attorney and Cox said, "Where are all these questions coming from?" According to Wagner, Cox ranted and raved to the point that Wagner hung up.

On May 9, Cox called again and complained about the charges (apparently those against her) and asked Wagner if she could explain them to her. Cox also told Wagner, "[W]e could get fired for calling back and forth to each other." (Wagner had been calling Bennett, about what is not clear.)

On May 12, according to Rocille Bennett, Cox told her and Sally Holland, that she did not want the girls to be talking over the telephone about the Union. She did not want the employees to call one another. She said she did not want the first-shift employees to be talking to the second-shift employees.

Holland testified on behalf of Respondent, but she was never specifically asked either by Respondent or the General Counsel as to whether she had ever been present at a conversation such as Bennett described. Thus, she neither contradicted nor corroborated Bennett. As I deem Bennett to be a credible witness, I credit her testimony and find that Cox's remarks to employees that they were not to call one another and that first-shift employees were not to talk to second-shift employees were directed to conversations which related either to matters of concern among the employees in connection with the hearing herein or to union activities, in either case matters protected by Section 7 of the Act, that such remarks constituted a prohibition against employees exercising Section 7 rights on nonworking time, and that Respondent thereby violated Section 8(a)(1) of the Act.

I do not find that in telling Wagner that she knew about her giving her pay stubs to the union man Cox created the impression that Wagner's protected activities were being kept under surveillance, because Cox told Wagner that Young had informed her and Wagner had herself told Young. I do find, however, that her interrogation of Wagner about where all the questions were coming from and her demand that Wagner explain the charges to her were unlawful. Employees' knowledge of, and participation in, matters involving the processing of unfair labor practice charges are protected by Section 7 of the Act, and it appears too evident to require discussion that a supervisor's intrusive questioning about such matters will tend to coerce employees into refraining from becoming involved. This is particularly true when the questioning is by the supervisor who is alleged to have engaged in unlawful conduct.

2. The refusal to bargain

Paragraph 7 of the complaint alleges that Respondent violated Section 8(a)(5) of thc Act by engaging in individual bargaining with its employees. The General Counsel has not adverted to which acts and conduct of Respondent he is relying on for this allegation. In my judgment, none of the conduct heretofore described constituted individual bargaining.

Paragraph 7 of the complaint also alleges that Respondent sought to undermine the Union by conduct described above and thereby violated Section 8(a)(5) of the Act. This allegation is disposed of below in connection with the refusal-to-bargain allegation in Case 25-CA-11838.

C. *Case 25-CA-11795*

1. Alleged interference, restraint, and coericon

The complaint in Case 25-CA-11795 alleges that, on or about December 20, Marge Cox threatened its employees with discharge or other reprisals if they cooperated with the Board and gave testimony under the Act. This allegation is based on the testimony of Lois Wagner that on December 18 Cox had talked to the Board and, when she came to work, she was very angry and she said, "If I find out who went to that damn Labor Board, I'll fire them on the spot." Two days later, Cox was still upset over her experience and she repeated her remarks about firing somebody if she found out who it was.

Respondent's defense to Wagner's testimony is that it should not be credited because, according to Wagner's own testimony, employee Mike Ferguson was present when Cox first made her remarks and he did not corroborate Wagner. Ferguson testified and was not examined about this conversation. Thus, he neither corroborated nor contradicted Wagner. In the circumstances, as Cox was not a reliable witness and did not deny this specific conversation, I credit Wagner. I find the remarks of Cox were unlawful threats and violative of Section 8(a)(1) of the Act.

2. The alleged discrimination against Naomi Thompson

Naomi Thompson was employed by Respondent in July 1977. She was discharged in November 1977, but was reinstated in August 1978, pursuant to arbitration. Prior to September 25, 1979, Thompson worked 5 hours per day on the second shift, 5 days per week. On September 25, she was advised that, effective September 28, her hours were being reduced to 4 hours per day because of a decrease in sales. Because she deemed 4 hours per day insufficient to warrant continuing to work, Thompson quit on October 1.

The General Counsel contends that Thompson's hours of work were reduced because of her union activities and that her quitting was, in law, a constructive discharge. As to her union activities, he adverted to the fact that Thompson was one of only two employees (the

other was Ferguson) to wear a union button in September and to her activity in removing a notice from the bulletin board relative to Saturday work, a matter about which she felt aggrieved, and her sending a copy to the Union. Thompson testified that Cox was upset about Thompson's removal of the notice and that she told her if she ever took anything off the bulletin board again she would fire her. Employees Hiten and Wagner testified that Cox also mentioned to them that Thompson had removed a notice from the bulletin board. According to Hiten, Cox told her that anyone caught taking anything off the bulletin board and sending it to the Union would be fired. Wagner also testified that Cox referred to the notice being sent to the Union.

According to Respondent, because of the many inconsistencies in the record on this point, Hiten and Wagner cannot be credited. Whatever merit there might be to Respondent's argument, it is overshadowed by the fact that Cox never denied any of the statements attributed to her by Thompson, Hiten, and Wagner relative to the removal of the notice. Rather, she was asked if she were upset by Thompson's action and had any problems with the notice leaving the cafeteria. Such questions and her answers were pointless. In the absence of denials, I credit Thompson, Hiten, and Wagner.

The foregoing supports a finding of animus against Thompson, but more than that is needed to establish that her hours of work were unlawfully reduced. There must be some evidence that the reduction in hours was motivated by the union activity. In this case, Respondent has asserted that the reduction was attributable to a negative trend in sales and profits. In this connection, the record indicates that on September 10 Klassen sent a memorandum to Cox suggesting a reduction of hours on the second shift. There is no evidence to support an inference that this memorandum was motivated by anything other than economic considerations. Cox did not act on the memorandum until September 25, and the General Counsel argues that the negative trend referred to in Klassen's memorandum had ended by September 25 so that a reduction was no longer necessary. I have reviewed Respondent's weekly operating reports and I find the data therein inconclusive on the issue of the necessity for a reduction in hours. The total number of hours worked each week appeared to vary from week to week, as did productivity figures and percent of profit, and it is difficult to see any significant difference in the figures before September 25 and after. In my judgment, on the data before me, whether a reduction in hours on the second shift was necessary was a business judgment and the evidence of animus against Thompson is insufficient to overcome it. In reaching this conclusion, I rely on the September 10 memorandum and the fact that initially Cox undertook to reduce the hours of Wagner also. While she may have changed her mind later, the fact that she proposed the reduction supports the assertion that it was in response to the September 10 memorandum. Moreover, it cannot be overlooked that the reduction in hours under consideration was only 5 hours per week in a total of close to 300. I do not know how many employers could demonstrate through their books and records that such a reduction was economically justified, particularly in an operation with many variable factors that can affect productivity and profit. It is significant that there is no claim that Thompson's hours were given to anyone else on the second shift.

Apart from the foregoing, I am unable to accept the premise on which the allegation of constructive discharge is based; namely, that Cox reduced Thompson's hours of work 1 hour per day in the belief Thompson would quit. True, Thompson testified she had told Cox months earlier that she could not continue to work if she received less than 5 hours per day, and I credit her testimony over Cox's denial. Nevertheless, I find it difficult to believe that Cox recalled the statement several months later and undertook to reduce Thompson's hours to bring about her quitting.

In short, in my judgment, the evidence adduced by the General Counsel is insufficient to warrant an inference that Thompson's hours of work were reduced because of her union activities, and I shall dismiss the allegation that she was constructively discharged in violation of Section 8(a)(1) and (3) of the Act.

D. *Case 25-CA-11838*

1. Alleged interference, restraint, and coercion

The collective-bargaining agreement between the Union and Respondent provided for a checkoff of dues. In January, a number of employees delivered signed statements to Respondent stating that they no longer desired the deduction of dues from their wages. Sometime thereafter, Respondent discontinued deducting dues on behalf of such employees.

The complaint alleges that Marge Cox solicited employees to revoke their dues-checkoff authorizations, thereby violating Section 8(a)(1) of the Act. In support of the allegation, the General Counsel adduced testimony from Lois Wagner that, one night in early January, Cox came to her and said, "[Y]ou are supposed to fill out a god-damn paper if you want those damn Union dues taken out of your check again." Wagner asked Cox if she had a form. She did not, so Wagner found a sheet of paper and wrote that she wanted her dues deducted. Wagner testified that Cox did not urge her one way or the other, although she did mention that Bennett was the only one who was going to have her dues deducted.

Rocille Bennett testified that, shortly after the election, Cox had come to her and said that the Company had to know if she wanted her dues deducted or not. Bennett had signed a statement that she did, and in April 1980 Cox approached her again and said that the Company had lost Bennett's statement. Bennett signed another statement, but this time she stated that she did not want her dues deducted.

Although seven other employees had signed statements revoking their dues-checkoff authorizations, Wagner and Bennett were the only witnesses called by the General Counsel to testify about any solicitation by Cox. However, Respondent's own witness, Maxine Tharp, testified that she was approached by Marge Cox, and Linda Young described how Cox approached other employees. The issue, then, is not whether Cox did ap-

proach employees about dues deductions, but, rather, whether her doing so was violative of Section 8(a)(1) of the Act.

Respondent contends Cox's conduct was not violative of the Act because it was in response to employees' inquiries about whether they had to continue dues deductions, and in approaching employees Cox neither encouraged nor discouraged them in their decision. I find no merit in Respondent's position.

There is testimony both by Cox and Linda Young that the question of dues deductions was raised by employees (whether only by Young to Cox or Young, Hiten, and Peggy Cox is not clear). However, neither Wagner, Bennett, nor Tharp were shown to have approached Cox. It was Cox who initiated the subject. The fact that some employees had approached Cox gave her no license to approach employees who had not. By her doing so, Respondent violated Section 8(a)(1) of the Act. *Rock-Tenn Company*, 238 NLRB 403 (1978).

Moreover, Cox's conduct was not as innocent as Respondent claims. Her remarks to Wagner about the "goddamn Union" and her statement that all but Bennett had revoked were clear encouragement to revoke. In Bennett's case, Cox even undertook to solicit her a second time after she had declined to revoke earlier with no showing that there was any necessity to do so. For the foregoing reasons, I find that Respondent violated Section 8(a)(1) by soliciting employees to revoke their dues-checkoff authorizations.

Paragraph 5(b) of the complaint alleges that in January 1980 Marge Cox threatened employees with withholding of wage increases mandated by Federal law. The allegation is based on the testimony of Wagner that on some unspecified date in January 1980 Cox told Wagner that her attorney had told her that no one would receive the $3.10 per hour until after this (apparently meaning the instant matter) was settled on June 5. While Cox did not expressly deny making this remark, it is difficult to accept Wagner's testimony as an accurate description of what Cox said because the remark as she describes it makes little sense. In my judgment, a finding that the remark constituted an unlawful threat is not warranted.

2. The refusal to bargain

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by a number of unilateral acts and by refusing to meet and bargain.

a. *The unilateral conduct*

(1) Discontinuance of dues checkoff

Although the General Counsel has alleged the discontinuance of dues checkoff as unilateral conduct violative of Section 8(a)(5) of the Act, he has not addressed himself to the issue in his brief. In *Peerless Roofing Co., Ltd.*, 247 NLRB 500 (1980), the Board adopted conclusions of the administrative law judge that the unilateral discontinuance of dues checkoff after the expiration of a contract was not unlawful. I find the case to be controlling and shall dismiss the allegation.[7]

(2) Job bidding

The complaint alleges that Respondent ceased allowing its employees to bid on available full-time positions or to select shift preferences. The General Counsel did not advert to this allegation in his brief and I do not know on what evidence he relies for its support. As I am unaware of any, I shall dismiss the allegation.

(3) Paydays

The complaint alleges that on or about January 1, 1980, Respondent unilaterally changed paydays from a weekly basis to a biweekly basis. The record indicates that by letter dated November 13, 1979, well in advance of the proposed change, Respondent notified the Union it was planning such a change. The Union never responded to the letter either to object or to request a meeting. In the circumstances, it may be said to have acquiesced therein.

(4) Clocking out for breaks

The complaint alleges that since on or about August 6, 1979, Respondent unilaterally required its employees to clock out for breaks. However, the evidence adduced at the hearing was directed to a showing that such a requirement was imposed on employees in January 1980. Sometime in January 1980, Wagner was spoken to by Klassen and Cox relative to her conduct *vis-a-vis*, Cummins management personnel. According to Wagner, she was told in this meeting that from then on when she took a supper break, she was to clock in and out. Employee Ferguson testified he was also to clock out for breaks. Both Wagner and Ferguson testified that prior to this they took breaks on the clock and were paid.

Respondent contends that no changes were made in either Wagner's or Ferguson's hours of work or pay.

Unlike other issues in this case, the issue should be resolvable by an examination of Respondent's records. Unfortunately, the records (consisting of timecards and weekly operating reports) are not complete, nor are they easily decipherable. Nevertheless, it does appear from Ferguson's timecards that a change occurred in the matter of break periods and clocking out after the Christmas break. It appears from his timecard for the week ending January 11, 1980, that he began clocking out that week, although it is not entirely clear from an examination of his timecard because the timeclock did not work properly. The timecards for the week ending January 25 were missing, so that one cannot determine whether Ferguson did clock out. However, the timecard for the week ending February 1, 1980, clearly indicates he was clocking out. None of Ferguson's timecards before January 1980 indicates similar clock entries. Any doubt that a change occurred at the time, however, was removed by a review of the weekly operating reports which indicate that, beginning with the week ending January 1, Fergu-

[7] See also *Finger Lakes Plumbing & Heating Co., Inc.*, 253 NLRB 406, fn. 4 (1980).

son's hours of pay were reduced from 5 hours per day to 4-1/2 hours per day. How long this situation persisted is not entirely clear, because it appears that Ferguson's hours of work may heve been reduced sometime in March and he continued to receive pay for 4-1/2 hours. The matter is one of remedy which can be resolved in compliance.

Wagner's timecards and her pay records also confirm her testimony. There were no "break" entries on her timecards before January 1980. In the week ending January 11, there is one handwritten "break" entry. Similarly, "break" entries appear for the weeks ending February 1, 8, and 22. Even more significant, and as was the case with Ferguson, although Wagner was clocking in and out at the same times as before, beginning with the week ending January 11, 1980, her hours of pay were reduced from 7 hours a day to 6-1/2 hours a day, a situation which persisted until the week ending May 2, 1980.

In short, Respondent's records corroborate the testimony of Wagner and Ferguson and clearly refute the assertion that no change occurred either in procedure or pay. Cox's testimony that the clocking out was begun at the behest of Wagner is not credited.

As noted earlier, this conduct is alleged to have constituted unilateral conduct violative of Section 8(a)(5) and (1) of the Act. It is clear the conduct represented a change in conditions of employment and that it was undertaken unilaterally. Although the contract had expired, it is settled law that upon expiration of a contract an employer is obligated to notify and bargain with the employees' collective-bargaining representative before it makes changes in conditions of employment. As Respondent did not do so, its conduct was violative of Section 8(a)(5) and (1) of the Act.

In his brief, the General Counsel argues that Respondent's policy relative to clocking in and out affected not only Wagner and Ferguson, but also first shift employees. As to first shift employees, he argues that they were asked to forgo their lunch breaks or be docked in pay. I reject the argument for lack of proof. No employee testified that he or she was required to forgo lunchbreaks or suffer a loss of pay, and the notation "no lunch" on certain timecards of first-shift employees is insufficient to support General Counsel's position.

(5) Reduction in hours

The complaint alleges that since on or about September 25, 1979, Respondent unilaterally reduced the hours of work of its employees. The record indicates that effective September 25, 1979, Naomi Thompson's hours of work were reduced from 5 hours to 4 hours per day without notice to the Union. In May 1980, Wagner's hours were reduced from 6-1/2 per day to 5-1/2 hours per day. Prior to the week ending May 16, 1980, Bennett had generally been paid for 7-1/2 hours per day (except for the weeks ending April 25 and May 2 and 9). By the week ending May 16, 1980, her hours had been reduced to 6 hours per day. Wagner testified that in May she was told that her hours of work were being reduced to 5-1/2 hours per day. The weekly operating reports confirm this, but the reduction appears to have lasted only 1 month. It appears that about the same time Ferguson's hours were reduced from 4-1/2 hours to 4 hours per day.

Respondent contends that these reductions in hours were not violative of the Act but were within its rights under the management rights clause of the agreement. Moreover, Respondent points out that reduction in hours had occurred in the past.

In my judgment, the reduction of hours shown to have occurred herein clearly fell within the scope of the management-rights clause which provided, in pertinent part: "The existing and continuing rights of management shall include, but not be limited to, the right to schedule operations and employees, hire, discipline, demote, or discharge for just cause; layoff employees for lack of work, manage, direct, and supervise its operations . . . ." Thus, the clause reserves to management such matters as scheduling operations and employees and the layoff of employees for lack of work, matters closely related to such a matter as a decision to reduce hours. In this connection, it is noted that article VII, section 1, which relates to hours of work provided that "Insofar as work is deemed necessary, the normal work week shall consist of five (5) days of eight (8) hours each . . . ." The phrase "Insofar as work is deemed necessary" appears clearly to vest in management the right to make the reductions in hours herein described.

On the basis of the foregoing, I find no merit to the allegation that the reductions in hours were violative of Section 8(a)(5) and (1) of the Act.

(6) Nonpayment of holiday pay

Article XII, section 1 of the contract which expired on December 7, 1979, provided for paid holidays on Christmas Eve Day, Christmas Day, New Year's Eve Day, and New Year's Day. On December 18, 1979, Respondent posted a notice that because of the upcoming layoff at Cummins Company it was forced to have a corresponding layoff, and that in accordance with company policy any employee on layoff for 3 or more consecutive days in conjunction with a holiday would not receive holiday pay.

The General Counsel contends that in not paying employees holiday pay as provided in the contract, Respondent engaged in unilateral conduct violative of Section 8(a)(5) and (1) of the Act. Although Respondent adverted to a company policy in its December 18 notice, no such policy was shown to exist and Respondent adverts to no contractual provision in defense of its conduct. Rather, it contends that its conduct was justified by overriding economic considerations. The argument borders on the frivolous. Respondent's situation before the holiday period in 1979 was precisely the same as in earlier years. The situation was different only in that *after* the regular holiday period Cummins contemplated a brief layoff. Thus, no need for a layoff of Respondent's employees until after the holiday period. By its notice, Respondent undertook to accelerate any layoff with no demonstrable purpose or saving other than the deprivation of holiday pay to employees who had been regularly employed. Such conduct clearly constituted a unilateral change in working conditions, and, as noted above, al-

though the contract had expired, Respondent was obligated to notify and bargain with the Union before it changed existing conditions of employment. Accordingly, as it did not do so, its conduct was violative Section 8(a)(5) and (1) of the Act.

b. *The refusal to meet and bargain*

By letter dated October 2, 1979, the Union requested that Respondent meet with it for the purpose of negotiating a new agreement, suggesting a meeting date of October 22. Respondent did not reply to the letter.

By letter dated January 15, 1980, the Union again demanded that Respondent meet and bargain with it over a new agreement and also with regard to unilateral changes made by Respondent. By letter dated January 29, 1980, Respondent acknowledged receipt of the October 2, 1979, and January 15, 1980, requests and asserted a good-faith doubt that the Union represented its employees. There was no express refusal to meet, but the letter stated the Union's demand was being forwarded to counsel. No further reply was ever made. I construe Respondent's response to constitute a refusal to meet and bargain. The question is whether or not it had an obligation to do so.

The law is well settled that after the expiration of the certification year, a certified union enjoys a rebuttal presumption that its majority status continued. In order to overcome the presumption, an employer who questions the Union's majority status must affirmatively show either (1) that at the time of the refusal the Union in fact no longer enjoyed majority status, or (2) that the employer's refusal was predicated on a good-faith and reasonably grounded doubt of the Union's continued majority status. As to the second of these, i.e., good-faith doubt, two prerequisites for sustaining the defense are that the asserted doubt must be based on objective considerations and it must not have been advanced for the purpose of gaining time in which to undermine the Union. *Terrell Machine Company*, 173 NLRB 1480 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970).

A threshold question is when Respondent's refusal to bargain occurred. The complaint alleges that it occurred on January 24, 1980. However, as noted above, the Union mailed a letter to Respondent requesting to meet and bargain on October 2, 1979, and Klassen admitted receipt of the letter within a day or two. It is undisputed that Respondent never responded to the request. No explanation was offered for such refusal, but it is evident when one considers Respondent's conduct after October 2, 1979, that its failure to respond was, in effect, a refusal to meet and bargain with the Union at that time, rather than at the later date of January 24. As a matter of fact, the refusal of January 24 only confirms the intent of Respondent's failure to respond in October. Accordingly, in determining whether there existed objective considerations to doubt the Union's majority status, inquiry must be addressed to the conditions which existed in the period on and after October 2, 1979.

The objective consideration relied on by Respondent for doubting the Union's majority status were, according to Klassen, the following:

1. None of the current employees were employees at the time of the first contract in 1973.

This is insufficient basis to question the Union's majority status as the Board has long held that turnover among employees cannot, by itself, be used as a basis for belief that a union has lost majority status since it is presumed new employees will support the Union in the same ratio as those whom they have replaced.[8] There was no rebuttal of that presumption here. To the contrary, all the employees employed at the time Respondent refused to bargain had joined the Union and authorized dues checkoff. True, union membership was required by the contract, but dues checkoff is voluntary and no employees had requested revocation of dues checkoff until after Respondent's refusal to bargain.

2. Receipt of a copy of the RD petition from the NLRB advising that 7 out of 10 employees wanted an election.

Initially, Klassen testified that he knew that 7 out of 10 employees had signed the showing of interest statement because he had received a copy from the Regional Office. However, after further examination, he admitted he was not certain that was so. He may very well have known how many employees had signed the showing of interest because of Cox's participation in the RD election and the showing of interest statement, as described above, but he would not normally receive such information from the Regional Office because that would not accord with Regional Office practice. In any event, Respondent could not rely on the RD petition and the showing of interest statement because of supervisory taint in the preparation of the petition and the showing of interest.

3. The absence of union activity, e.g., lack of union meetings, or contacts with Klassen relative to grievances.

On the matter of union meetings, it does not appear that any were being held in the period immediately preceding Respondent's refusal to bargain, but I fail to see how this demonstrates lack of employee support. The Union was a viable organization as shown by the fact that it had notified Respondent of a dues increase to be deducted from employee wages. On the matter of grievances, several employees had been reinstated pursuant to a grievance and arbitration proceeding in 1978, during the term of the contract. Moreover, until September 1979, the employees had a shop steward, Sally Holland, who, according to Cox, quit her job because she was pestered with too many complaints.

In short, the record does not support a finding of union inactivity such as to warrant Respondent questioning the Union's majority status.

4. At a meeting of employees in August, he had told employees that he had been notified by the Union of a dues increase from $5 to $7.50 per month and the employees had become upset and told him they did not know what they were paying dues for because the Union was doing nothing for them.

I fail to see how this supports a good-faith doubt of majority status. Significantly, however upset the employ-

[8] *Laystrom Manufacturing Co.*, 151 NLRB 1482 (1965).

ees were about the dues increase, no employee indicated at the meeting that he or she no longer wanted to be represented by the Union. (The employees may not have known at the time that they could rid themselves of the Union.) Employee Hiten did inquire about the matter in late September, but the true wishes of the employees cannot be ascertained by what happened thereafter because of Respondent's interference in the decertification process.

5. On October 5, a union representative failed to meet with Klassen as agreed.

I fail to see how this relates to employee sentiment.

In short, the record does not support Respondent's assertion that there existed objective considerations to justify its questioning the Union's majority status. In reaching this conclusion, I have adverted to Respondent's unlawful conduct relative to the RD petition, but its unlawful conduct did not consist only in the unlawful assistance in the preparation of the RD petition. In addition, there was Cox's unlawful interrogation of Wagner in early August; Cox's promise of more money if the employees did not have a union; and Cox's remark to Ferguson that working conditions would be a lot better off with the Union out. Such remarks would tend to dissipate the Union's majority status and one of the conditions for the assertion of a good-faith doubt is that it is asserted in a context free of unfair labor practices.

Cox's interrogation of Wagner and her promises to Wagner and Ferguson may not seem sufficiently serious to deny employees an opportunity to vote on whether they still desire union representation, but Respondent's unlawful conduct did not end there. To the contrary, for a period of months, and in a variety of ways, Respondent had been guilty of unfair labor practices which demonstrate that its refusal to meet and bargain with the Union after its October 2 request was designed to gain time to undermine further whatever support remained for union representation. Thus, there are Cox's threats of a cut in hours if the Union won the RD election, the threat to discharge whoever went to the Board, the denial of holiday pay, the solicitation of revocations of dues checkoff, and the requirement that Wagner and Ferguson to clock out for breaks. Such unlawful conduct precludes Respondent from asserting any good-faith doubt of the Union's continued majority status.

On the basis of the foregoing, I find that by its acts of interference, restraint, and coercion designed to undermine the Union and erode its support among employees and by refusing since on or about October 2, 1979, to meet and bargain with the Union, Respondent has violated Section 8(a)(5) and (1) of the Act.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent as set forth above, occurring in connection with operations described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take appropriate and affirmative action designed to effectuate the policies of the Act. In particular, I shall recommend that Lois Wagner and Mike Ferguson be made whole for any wages lost by reason of Respondent's unilateral change relative to clocking out for breaks, and that all employees who otherwise fulfilled the requirements of holiday pay be made whole by payment to them for 4 days of holiday pay for the Christmas 1979 holiday period, with interest thereon in accordance with *Florida Steel Corporation*, 231 NLRB 651 (1977). As to Respondent's discontinuance of dues checkoff for those employees who were unlawfully solicited to revoke their authorizations, I shall not recommend that Respondent remit dues to the Union in light of *Peerless Roofing Co., Ltd.*, 247 NLRB 500 (1980).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All full-time and regular part-time employees of Respondent employed at its food service operation at the Cummins facility in Walesboro, Indiana, cxclusive of all clerical cmployees, all confidential employees, all professional employees, all guards and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.
4. At all times material herein, the Union has been the exclusive representative of the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By its acts of interference, restraint, and coercion designed to undermine the Union and erode its support among employees, by its unilatcral change in clocking out for breaks and failurc to pay holiday pay, and by refusing to meet and bargain with the Union relative to rates of pay, wages, hours of work, and conditions of employment, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(5) and 2(6) and (7) of the Act.
6. By questioning employees about their union sentiments or activities and their cooperation with the National Labor Relations Board in the processing of cases in a manner and under circumstances tending to coerce employees in the exercise of Section 7 rights, by creating the impression that the union activities of the employees were under surveillance, by promises of higher wages, improved working conditions, or other benefits, by threats of a reduction in hours if the employees selected the Union in an election, by assisting employees in the filing of a decertification petition, by soliciting employees to revoke dues-checkoff authorizations, by prohibiting employees from talking about the Union on nonworking time, and by threats to discharge employees for cooper-

ating with the National Labor Relations Board, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

7. The General Counsel has failed to establish by a preponderance of the evidence that Respondent reduced the hours of work of Naomi Thompson because of her union activities and that she was by reason thereof constructively discharged.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[9]

The Respondent, Cardinal Systems, a Division of Hospitality Motor Inns, Inc., d/b/a Cummins Component Plant, Walesboro, Indiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees about their union sentiments or activities, and their cooperation with the National Labor Relations Board in the processing of cases in a manner or under circumstances constituting interference with, and restraint and coercion of employees in the exercise of rights guaranteed by Section 7 of the Act.

(b) Creating the impression of surveillance of employees' union activities by telling employees it will find out what happens at union meetings.

(c) Promising employees higher wages, improved working conditions, or other benefits, in order to induce them to withdraw their support from the Union.

(d) Threatening employees with a reduction in hours of work if they selected the Union in an election to be conducted by the National Labor Relations Board.

(e) Assisting employees in the filing of a petition to decertify the Union.

(f) Soliciting employees to revoke dues-checkoff authorizations.

(g) Prohibiting employees from talking about the Union on nonworking time.

(h) Threatening to discharge employees for cooperating with the National Labor Relations Board.

(i) Refusing to bargain with the Union as the exclusive representative of its employees in the unit herein found appropriate by changing working conditions without notice to, or consultation with, the Union, with regard to clocking out for breaks, by failing to pay holiday pay, and by refusing to meet and bargain with regard to rates of pay, wages, hours of work, and conditions of employment.

(j) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist the above-named labor organization, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act or to refrain from any and all such activities.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Make whole Lois Wagner and Mike Ferguson by payment for break periods, with interest thereon.

(b) Make whole all employees otherwise entitled to holiday pay for the Christmas 1979 period by payment to them of the 4 days of holiday pay unlawfully withheld, with interest thereon.

(c) Upon request, meet and bargain with the Hotel and Restaurant Employees and Bartenders Union, Local No. 58, AFL-CIO, in the appropriate unit described above, with regard to rates of pay, wages, hours of work, and conditions of employment of its employees, and, if an understanding is reached, embody such understanding in a signed agreement.

(d) Post at its facility at Walesboro, Indiana, copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 25, after being signed by a duly authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the allegations of the complaint found not to have been sustained by the evidence be dismissed.

[9] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."